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November 6, 2003

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**VIA COURIER**

**RECEIVED**

**DEC 16 2003**

Marlene H Dortch, Esq  
Secretary  
Federal Communications Commission  
Office of the Secretary  
445 Twelfth Street, SW  
Washington, DC 20554

**Federal Communications Commission  
Office of the Secretary**

**Re: Ex Parte Presentation Notice: ET Docket No. 00-258;  
WT Dockets No. 03-66, 02-55, 02-68, and 02-55; MM Docket No.  
97-217; and IB Docket No. 99-81**

Dear Ms. Dortch:

On November 5, 2003, Billy J. Parrott, President and CEO of Private Networks, Inc. ("PNI") and the undersigned, on behalf of the Ad Hoc MDS Alliance ("Ad Hoc"), met with Bruce A. Franca, Deputy Chief of the Office of Engineering & Technology ("OET") and Ira Keltz, Geraldine Matise, and Jamison Prime of OET's Policy & Rules Division; and Commissioner Kathleen Abernathy and Jennifer Manner of her staff, respectively, regarding various proposals under consideration for relocating the Multipoint Distribution Service ("MDS") from the 2150-2162 MHz band and the importance of resolving the MDS relocation issue contemporaneously with the 800 MHz Public Safety proceeding. James E. Lindstrom, President of Broadcast Data Corporation ("BDC") participated in both meetings via telephone.

Ad Hoc's presentations were consistent with its previous comments and ex parte submissions in the above-referenced dockets. Ad Hoc is a coalition of approximately fifteen small and/or minority-owned MDS licensees including PNI and BDC and should not be confused with other interested parties with Ad Hoc as part of their name. Ad Hoc members represent 60% of the MDS Channel 2 grandfathered licenses and some have secured additional MDS spectrum at auction or on the secondary market. The record also indicates that The Wireless Communications Association International, Inc., Sprint, BellSouth, Cingular Wireless and MCI, in addition to dozens of other small MDS licensees and service providers that have significant interests in these proceedings are supportive of Ad Hoc's proposal regarding the 1.9 band (now referred to as the "G Block") and its concerns about relocation to upper spectrum.

Ad Hoc discussed the significant negative financial impact that the past three years of uncertainty regarding the forced displacement of MDS from the 2150-2162 MHz band have



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caused, such as the inability to raise money, upgrade, repair and/or maintain current systems. More recently, since the release of the FCC's Report and Order adopting Third Generation wireless services (WT Docket No. 02-353, FCC 03-xxx, Public Notice released October 16, 2003), Ad Hoc members have faced strong arm tactics from a major lessee to force renegotiation of current long term leases, accompanied by threats to terminate such leases, due to the continuing regulatory uncertainty shrouding MDS Channels 1 and 2. There is a growing perception in the industry that MDS' relocation will not be resolved anytime soon and when it is, Ad Hoc members will not receive comparable spectrum that will enable them to, at minimum, maintain their current level of service (i.e., primarily two way high speed wireless internet access). Any material changes in lease terms or a premature termination of such leases will simply put these small MDS licensees out of business and further exacerbates the financial difficulty faced by Ad Hoc members since the FCC first proposed to relocate MDS. Thus, the Commission is on a path that will ultimately force some Ad Hoc members into bankruptcy and cause them to default in making timely auction installment payments to the Commission.

Therefore, it is imperative and in the public interest that relocation of MDS be part of the discussion regarding the 800 MHz public safety issues and the Nextel Consensus Plan. Ad Hoc respectfully requests that the Wireless Telecommunications Bureau (WTB) and the OET conduct their review with the objective to finalize these two proceedings contemporaneously and expeditiously. Time is of the essence for Ad Hoc.

Ad Hoc fully recognizes that the public safety issues are important and complex. Nonetheless, it is also important that the FCC not take any action that will purposefully or inadvertently undermine or put an entire class of small business service providers out of business. It has been long-standing FCC policy that upon its forced relocation or a reallocation of services, that incumbents be made whole on a technological and financial level. In this instance, any decision should take into account the previous harm caused to MDS since its existence has been subject to uncertainty at 2150-2162 MHz.

Ad Hoc discussed various options for relocation of MDS, including its long-standing request for the G Block as the most efficient and reasonable relocation spectrum as detailed in previous comments and ex parte filings. Grant of MDS' proposal would ensure a rapid deployment and efficient transition for AWS. In response to OET's inquiry about the possibility of the MDS industry reaching a consensus that would allow for Channels 1 and 2 to move to the 2.5 MHz block, Ad Hoc raised several concerns. First, it is not practical nor reasonable to expect that smaller licensees such as Ad Hoc members would have sufficient negotiating leverage or bargaining power with larger MDS licenses that are either Ad Hoc lessees or competitors, especially at this late date. Ad Hoc has actively, and in good faith, participated in multiple proceedings by offering workable proposals, underwriting engineering research to find creative ways that will assist the FCC in resolving these issues. But Ad Hoc's efforts have been eclipsed and its proposals have been usurped by the wants of everyone else. Ad Hoc respectfully submits that it is simply not fair for the FCC to shift the burden to Ad Hoc to broker a solution for a



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situation the FCC created. It is the FCC's responsibility to find a comparable home for MDS Channels 1 and 2 in a way that does not stifle service, investment, innovation, or the ability for small MDS licensees to compete.

Second, Ad Hoc questioned the technical feasibility about placement of Channels 1 and 2 in an already saturated band, without significant reduction of spectrum for the incumbents in the 2.5 MHz band and/or Channel 1 and 2 licensees. While it recognizes that technological advancements and changes are expected, Ad Hoc does not believe that its members should be subject to a forced reduction of spectrum that would relegate them to today's level of service with no means to grow. Such a reduction of spectrum would stifle future investments, research, and innovation for any licensee and would make the auction process even more difficult for businesses and their investors that anticipate an increased value of spectrum today and tomorrow.

Moreover, OET's comparisons to the FCC's reduction of spectrum in the satellite industry and broadcast auxiliary services, (IB Docket No. 01-185), as precedent for a reduction for MDS are not relevant nor comparable given the severe impact on individual MDS licensees as opposed to entire services, and that no other wireless licensee, whether involved in an auction or not, has ever been subject to a reduction of spectrum even though technology has advanced exponentially, i.e. cellular. Such a reduction for MDS and not for other wireless providers in which MDS competes with at multiple levels undermines competition and diversity in services and licensees, all long-standing policies grounded in the Communications Act of 1934, as amended. 47 U.S.C. §§ 151, 309(j), 257(b).

Finally, such a move for Ad Hoc members to the 2.5 band is a regulatory sleight of hand because it gives the MDS BTA holders something they already own or have rights to own as BTA licensees. And as a result, Channel 1 and 2 simply evaporate leaving many Ad Hoc licensees with nothing. This proposal, as a solution for MDS' relocation, is illusory, impossible to implement, and will be subject to numerous legal challenges.

Ad Hoc also reiterated its concerns filed in previous comments regarding significant interference and the need for inefficient guard bands that would occur when sliding up the band to 2162-2180 MHz. Such a move would not reduce MDS' regulatory uncertainty and would continue to stifle investment and vendor participation in MDS given that the move would only be temporary in light of the wireless industry's request for additional AWS spectrum. Ad Hoc encouraged the FCC to take specific steps to ensure that MDS has long-term viability in its final resting place, with comparable spectrum and capacity, as well as the ability to offer competitive services to the public.

To this end, Ad Hoc restated that if the G Block was not possible, it would prefer to stay in the 2150-2162 MHz bands, obviously with modifications to accommodate the newly reallocated AWS services by allowing MDS to provide such services and/or to encourage partnerships with other providers through lease arrangements.



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Please contact the undersigned if you have questions or comments.

Sincerely,

S. Jenell Trigg  
*Counsel to Private Networks, Inc.*

cc: Commissioner Kathleen Abernathy  
Commissioner Jonathan Adelstein  
Jennifer Manner  
Barry Ohlson  
Paul Margie  
Sam Feder  
Sheryl Wilkerson  
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